

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MAY 10 2001

Michael N. Milby, Clerk
Laredo Division

IN RE: §
AGRIFOS FERTILIZER L.P., ET AL., § JOINTLY ADMINISTERED
DEBTORS. § UNDER CASE NO. 01-35220-H2-11
§

In Re: §
AGRIFOS FERTILIZER L.P. § Case No. 01-35220-H2-11
AGRIFOS L.L.C. § Case No. 01-35221-H2-11
AGRIFOS MINING L.L.C. § Case No. 01-35222-H2-11
BEDROCK HOLDINGS, LLC § Case No. 01-35223-H2-11
AGRIFOS FERTILIZER GP L.L.C. § Case No. 01-35224-H2-11
AGRIFOS FERTILIZER LP L.L.C. § Case No. 01-35225-H2-11

**INTERIM STIPULATION AND ORDER AUTHORIZING DEBTORS TO USE CASH
COLLATERAL PURSUANT TO 11 U.S.C. § 363(c)(2)(B) ON A LIMITED BASIS**

Came on for consideration the Motion of the Debtors for approval of a Stipulation and Order Authorizing Debtors to Use Cash Collateral Pursuant to 11 U.S.C. § 363(c)(2)(B) on a Limited Basis ("Stipulation") by and between the Debtors and Congress Financial Corporation (New England) ("Congress").

A. PARTIES.

1. The captioned Debtors filed voluntary petitions under chapter 11 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") on May 8, 2001 (the "Petition Date"). Since the Petition Date, the Debtors have remained in possession of their assets and are operating their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. Congress is a Massachusetts corporation.

B. PRE-PETITION AGREEMENTS AND COLLATERAL.

1. Prior to the Petition Date, Congress made various loans, advances and extensions of credit (the "Pre-Petition Loans") to or for the benefit of certain of the Debtors pursuant to various agreements, instruments and other documents, including, but not limited to that certain Amended and Restated Loan Agreement dated September 10, 1998, as amended on March 28, 2000 (the foregoing, together with all agreements, instruments and other documents executed in

connection therewith, the "Pre-Petition Loan Agreements"). Copies of the Pre-Petition Loan Agreements will be made available on request of any party in interest.

2. To secure the Pre-Petition Indebtedness, the debtors Agrifos, Mining and Fertilizer granted to Congress, pursuant to various agreements, liens on and security interests in substantially all of their personal property, real property belonging to Mining wherever located, then owned or thereafter acquired or arising, and the proceeds, products, rents and profits of all of the foregoing (all of the foregoing collateral generally described above, together with all of the proceeds, products, rents and profits thereof shall be referred to herein collectively as the "Pre-Petition Collateral," and such liens, mortgages, security interests and pledges shall be referred to herein, collectively, as the "Pre-Petition Liens"). Notwithstanding the foregoing, the Pre-Petition Collateral excludes certain equipment and real property and improvements owned by Fertilizer and located in Pasadena, Texas (the "Pasadena Property").

as more fully and specifically described in the pre-petition loan agreements.

3. The Debtors require the use of Cash Collateral for the purpose of funding their operations, and have requested Congress to consent to the Debtors' use of Cash Collateral pursuant to the terms and subject to the conditions set forth herein.

4. Based upon the various acknowledgments, representations, warranties and covenants contained herein, Congress is willing to consent to the Debtors' limited use of Cash Collateral commencing upon the date this Stipulation is approved by the Court for the limited purposes and for the term set forth herein and otherwise in accordance with the terms and subject to the conditions contained herein.

C. ACKNOWLEDGMENTS, REPRESENTATIONS, RELEASE.

1. The Debtors hereby acknowledge, represent, warrant and agree that:

a. All of the provisions contained in Sections A and B hereto are true and correct and are expressly incorporated herein by reference;

b. Congress asserts that the Pre-Petition Loan Agreements are legal, valid and binding obligations upon the Debtors, and are enforceable against the Debtors in accordance with their respective terms subject only to the Debtors' rights under the Bankruptcy Code or principles of equity;

c. The outstanding amounts due to Congress under the Pre-Petition Loan Agreements as of the Petition Date are \$5,741,191.00 of principal, together with all accrued and unpaid interest and Congress's fees and costs including without limitation, the reasonable legal and other professional fees incurred by Congress in connection with the collection of the aforesaid amounts (collectively, the "Pre-Petition Obligations").

d. Congress asserts that it has duly perfected, valid security interests in and liens (collectively, the "Liens") on the Pre-Petition Collateral, to secure the Pre-Petition Obligations; and

2. The Debtors hereby acknowledge the extent and validity of the Liens. With respect to any claims against Congress, if the Debtors have not asserted such claims on or before thirty (30) days from the date of this Stipulation, the Debtors shall be deemed, without further Court order, to waive any right they may have as of the date of this Stipulation to contest, setoff against, counterclaim or seek other reduction of Congress's Liens and/or the Pre-Petition Obligations.

D. CASH COLLATERAL AND OTHER AGREEMENTS.

1. The Debtors have requested Congress to consent to their limited use of Cash Collateral (as hereinafter defined) which the Debtors represent is necessary to fund their operations. For purposes of this Stipulation, "Cash Collateral" shall have the meaning ascribed to it pursuant to 11 U.S.C. § 363(a), and shall include the proceeds, products, rents and profits of and from all Pre-Petition Collateral.

2. The Budget attached hereto as Exhibit "A" was prepared by the Debtors and enumerates in detail on a daily basis the Debtors' anticipated collections and cash expenses of operations ("Approved Expenses") together with the Debtors' projected cash receipts ("Projected Revenues") from the Petition Date through the Termination Date.

3. Subject to the terms and conditions set forth herein (and contingent upon Debtors' compliance herewith) and on the condition precedent that this Stipulation is approved by the Bankruptcy Court following a preliminary or final hearing as provided in Bankruptcy Rule 4001(b), Congress consents to the Debtors' use of Cash Collateral to pay only the Approved Expenses set forth in the Budget from the date this Stipulation is approved and entered as an order by the Court until the "Termination Date" which shall be the earlier of (a) May 21, 2001; (b) the date which is five calendar days after the date of a written notice of an Event of Default (as hereinafter defined); or (c) the date which is five calendar days after the date of a written notice from Debtors revoking its consent to the terms and conditions of this Stipulation; except that the Termination Date may be extended from time to time by a written agreement between Congress and the Debtors without the need for further Court approval, subject only to written notice thereof to the Court, the parties listed on the Debtors' Master Service List in effect at the time of such extension, and counsel for the Official Committee of Unsecured Creditors, if any.

4. The Debtors' right to continue to use Cash Collateral shall be contingent upon the Debtors' compliance with each and every provision of this Stipulation.

E. ADEQUATE PROTECTION. As adequate protection for the Debtors' use of Cash Collateral:

1. The Debtors hereby grant to Congress replacement security interests and liens (to the extent of and of the same priority as Congress's security interests and liens in and on the Pre-Petition Collateral) on all of the Debtors' now existing and hereafter acquired assets of the same type and category that First Union had a lien on pre-petition, and all cash and non-cash proceeds of all of the foregoing, but only to the extent and in the priority of Congress's valid and perfected liens on such assets prior to the Petition Date (collectively, the "Post-Petition Collateral"), which liens shall be deemed to be effective from the Petition Date; provided, however, that such liens and security interests shall be limited to the extent that the Debtors use Cash Collateral and to the extent that the value of the Pre-Petition Collateral diminishes.

2. To the extent that the Debtors use Cash Collateral in an amount in excess of the value of Congress's interest in the Pre-Petition Collateral and the Post-Petition Collateral, such use shall constitute a cost and expense of administration in this chapter 11 case and shall have a superpriority status pursuant to Code § 507(b) and thus shall be paid ahead of all other costs and expenses of administration including, but not limited to, those specified in Code §§ 503(b) or 507(b) of the Code, subject, however, to the unpaid fees of the clerk of the Bankruptcy Court or District Court, as applicable, and of the United States Trustee pursuant to 28 U.S.C. § 1930(a) and (b) and the Carve Out as that term is defined in the Interim Order Authorizing Debtors in Possession to Enter Into Post-Petition Financing Agreement and Obtain Post-Petition Financing Pursuant to Sections 363 and 364 of the Bankruptcy Code and Granting Liens, Security Interests and Superpriority Claims.

3. The post-petition liens and security interests granted to Congress pursuant to this Stipulation are perfected by operation of law upon the Bankruptcy Court's approval of this Stipulation nunc pro tunc from the Petition Date without further action by Congress. Congress may, but shall not be required to, file any Uniform Commercial Code financing statements and record any additional documents in any jurisdiction or take any other or further action to validate or perfect the security interests and liens granted to them pursuant to and in accordance with this Stipulation. If Congress deem(s) it necessary or convenient, the Debtors shall execute and deliver to Congress, or shall have executed and delivered to Congress, all in form and substance satisfactory to Congress, any other documents, instruments or writings to evidence the terms of this Stipulation, the use of Cash Collateral and/or Congress's liens and security interests, and Congress may request from time to time the execution and delivery of Uniform Commercial Code financing statements, continuation statements, amendments to financing statements, and any other instruments and/or documents relating to the use of Cash Collateral and/or the security interests and liens granted hereunder. The Debtors shall execute all financing statements, amendments and other documents desired by Congress for the perfection of the security interests and liens granted hereunder and the Debtors agree to a lifting of the automatic stay for the limited purpose of carrying out the purposes of this Section. Furthermore, the Debtors

irrevocably authorize the filing of a carbon, photographic or other reproduction of this Stipulation as a financing statement, and agree that such filing is sufficient as a financing statement subject to applicable state law.

4. All of the security interests in and liens on the Post-Petition Collateral granted hereunder are hereby deemed to be effective on and after the Petition Date, shall continue in full force and effect and shall survive the termination of this Stipulation.

5. The Debtors shall pay to Congress, as adequate protection payments, interest on the Pre-Petition Loans at the non-default rate(s) provided for in accordance with the terms set forth in the Pre-Petition Loan Agreements. Congress reserves the right to claim from the Debtors payment of the difference between the non-default rate of interest and the default rate of interest. The Debtors reserve the right to object to such claims.

6. Debtors shall pay to Congress, to permanently reduce the Pre-Petition Loans, all proceeds from the liquidation or other disposition of any Pre-Petition Collateral outside of the ordinary course of business for the Debtors (after payment of senior liens) including, but not limited to, all proceeds from the sale of Mining's real property generally located in Nichols, Florida.

7. As additional adequate protection for the Debtors' use of Cash Collateral and as a further condition to Congress's entry into this Stipulation, the Debtors shall not use any Cash Collateral during the term of this Stipulation except as authorized by this Stipulation and in accordance with the Budget or as consented to by Congress.

8. During the term of this Stipulation, the Debtors shall pay all insurance premiums necessary to maintain adequate insurance coverage on all of Debtors' assets and shall pay all withholding taxes and all other taxes assessed against the Debtors as and when due; and

9. The Debtors shall deliver to Congress, during the term of this Stipulation, any documents or information reasonably requested by Congress.

10. During the term of this Stipulation, during the Debtors' normal business hours, Congress and/or its agents, including but not limited to attorneys, accountants, consultants, appraisers and/or environmental experts, shall have the right on an agreed periodic basis to inspect any of the Debtors' books, records, business plans and any of the Pre-Petition Collateral and the Post-Petition Collateral. Debtors will permit Congress and/or its agents (including consultants) full access to the Debtors' facilities to carry out such inspection. At such times as are mutually agreeable, Congress and/or its agents shall also have full access to Debtors' personnel and the Debtors' professionals and/or consultants, who shall cooperate with Congress and/or its agents in the performance of inspections and audits, the determination of the Debtors' cash needs, the verification of financial information of the Debtors and the evaluation of the

Debtors' performance in bankruptcy together with the Debtors' prospects for formulating a viable and acceptable plan of reorganization or plan of liquidation provided, however, that nothing herein shall be construed as impairing the Debtors' attorney-client and work product privileges or the fiduciary responsibilities of the debtor-in-possession. To the extent professionals and/or consultants of the Debtors have not been retained by the Debtors in these bankruptcy cases, the Debtors shall use their best efforts to provide Congress with access to such professionals and/or consultants upon their retention on terms consistent with this paragraph.

11. This Stipulation is without prejudice to the rights of Congress to seek additional adequate protection, to the extent of any diminution in the value of the Pre-Petition Collateral. Similarly, this Stipulation is without prejudice to the right of the Debtor to controvert such motion or request or to seek further relief as may be appropriate pursuant to §363(c)(2)(B) of the Bankruptcy Code. Similarly, in the event of a termination pursuant to Section G of this Stipulation, the Debtors reserve the right to seek further relief as may be appropriate pursuant to §363(c)(2)(B) of the Bankruptcy Code.

12. Debtors hereby covenant and agree that they shall provide to Congress on a daily basis perpetual inventory reports and inventory reports by category, copies of purchase orders, invoices and delivery documents for inventory acquired by Debtors, and an inventory report adjusting the Value of Eligible Inventory to reflect the then current market price thereof and

accounts receivable aging and such other related information as Congress reasonably requests!

13. At no time shall the sum of: (i) 85% of the Net Amount of all Eligible Accounts; plus (ii) the lesser of (a) the sum of fifty percent (50%) of the value of Eligible Inventory (in the case of Chemical Inventory not to exceed \$1,800,000), or (b) the amount equal to: (1) \$10,000,000 minus (2) fifty percent (50%) of the then undrawn amounts of the outstanding Letter of Credit Accommodations for the purpose of purchasing goods; plus (iii) cash of Fertilizer or Mining maintained in bank accounts at Congress; less (iv) any Availability Reserves be less than \$5,741,191.00. Any capitalized terms contained herein and not otherwise defined shall have the meanings ascribed to such terms in the Pre-Petition Loan Agreements. This shall constitute a limit on Debtors' use of cash collateral.

F. FUTURE OPERATIONS.

1. To the greatest extent permitted under the Pre-Petition Loan Agreements and the Bankruptcy Code, all costs and expenses reasonably incurred by Congress in connection with the preparation and approval of this Stipulation, the preservation and protection of its rights hereunder and the collection of the indebtedness owed by the Debtors to Congress including, without limitation, all filing fees and reasonable counsel fees incurred in connection with the foregoing, and all insurance premiums and other payments reasonably incurred by Congress to adequately insure the Pre-Petition Collateral and the Post-Petition Collateral, but only to the extent such insurance is not provided by the Debtors, and all such other expenses, fees and costs reasonably incurred by Congress in connection with this bankruptcy case, the loans made to or for the benefit of the Debtors, and the enforcement of Congress's rights in the collection of the

loans or the preservation of its collateral, whether incurred pre-petition or post-petition, shall constitute a part of the indebtedness owing to Congress ("Post-Petition Costs and Expenses").

2. During the period from the date hereof through the Termination Date, the Debtors agree that they will not grant a lien or security interest (except to the extent a lien or security interest may have been granted to a third party pre-petition in the same type or category of Pre-Petition Collateral) in any of the Pre-Petition Collateral or Post-Petition Collateral to any other party (except First Union National Bank) without the prior written consent of Congress.

G. EVENTS OF DEFAULT AND TERMINATION.

1. The occurrence of any of the following during the term of this Stipulation shall constitute an event of default hereunder ("Event of Default"):

- a. Any Debtor shall fail to keep, observe or perform any of its material agreements or undertakings hereunder including, but not limited to, all payment requirements and reporting provisions contained herein;
- b. Any Debtor shall knowingly furnish or knowingly make any false, inaccurate or materially incomplete representation, warranty, certificate, report or summary in connection with or under this Stipulation;
- c. Unless Congress has been notified in writing and has not objected thereto within three (3) Business Days, Agrifos, Mining or Fertilizer shall permanently cease substantially all of their operations or take any action for the purpose of such cessation;
- d. A trustee is appointed for Agrifos, Fertilizer or Mining;
- e. Any Debtor, committee of creditors or any other party-in-interest shall contest the extent, validity and/or priority of any lien or security interest of Congress, file any claim, complaint, adversary proceeding, suit, demand, action or cause of action against Congress, or shall seek to have the Bankruptcy Court annul, modify or amend any part of this Stipulation without the prior written consent of Congress;
- f. Any Debtor shall contract or agree to sell or sells any of its assets, outside of the ordinary course of business, which are subject to Congress's Liens, without prior written consent of Congress;
- g. The Pre-Petition Collateral or Post-Petition Collateral is impaired by the imposition of any material lien, claim or encumbrance arising after the

Petition Date, which is asserted to be equal or senior, in whole or in part, to the Liens in favor of Congress, except to the extent permitted hereunder or consented to by Congress;

- h. Any default or event of default shall occur and be continuing pursuant to any agreement entered into after the date of the filing of these Chapter 11 cases between any one or more of the Debtors and any third party (including, but not limited to First Union National Bank) pursuant to which agreement such third party: (i) has consented to such Borrower's use of its cash collateral; or (ii) has agreed to provide such Borrower with debtor-in-possession financing pursuant to § 363 of the Bankruptcy Code;
- i. Any of the chapter 11 cases for Agrifos, Fertilizer or Mining are voluntarily converted to a case under chapter 7 of the Bankruptcy Code or any of such Debtors file a motion requesting a dismissal or a conversion of its chapter 11 case to a liquidation under chapter 7 of the Bankruptcy Code unless any of the foregoing are consented to by Congress; or
- j. Any Debtor attempts, under Section 363, 364 or any other Section of the Bankruptcy Code to subordinate the Liens of Congress or to provide any person (other than First Union National Bank) any lien or adequate protection in the Pre-Petition Collateral or the Post-Petition Collateral without the prior written consent of Congress.

2. Upon the Termination Date, this Stipulation shall immediately terminate, and unless otherwise extended by the parties hereto in writing, the Debtors' right to use Cash Collateral shall terminate.

H. MISCELLANEOUS.

1. The Debtors' representations and warranties, acknowledgments and waivers set forth in this Stipulation shall survive the termination hereof.

2. The rights, powers and remedies of Congress provided in this Stipulation and the Pre-Petition Loan Agreements are cumulative and not exclusive of any right, power or remedy provided by law or equity. No failure or delay on the part of any of Congress in the exercise of any other right, power or remedy or shall constitute a waiver of such right or remedy.

3. This Stipulation constitutes the sole agreement of Congress and the Debtors with respect to the subject matter hereof and supersedes all oral negotiations and prior writings with respect to the subject matter hereof.

4. No amendment or extension of this Stipulation, and no waiver of any one or more of the provisions hereof shall be effective unless set forth in writing and signed by Congress and the Debtors.

5. This Stipulation: (i) shall be binding upon each Debtor, Congress and, where applicable, their respective predecessors, successors, agents and permitted assigns (including, as to the Debtors, any trustee appointed or elected in these cases or in a case under chapter 7); and (ii) shall inure to the benefit of the Debtors, Congress and, where applicable, their respective predecessors, successors, agents and permitted assigns; provided, however, that the Debtors may not assign their rights hereunder without the written consent of Congress, and any such assignment or attempted assignment by the Debtors shall be void and of no effect with respect to Congress.

6. The performance of Congress's and the Debtors' obligations under this Stipulation is expressly conditioned upon the approval by the Bankruptcy Court of this Stipulation.

7. The Debtors and Congress represent and warrant to each other that this Stipulation has been duly and validly executed and delivered and that the Stipulation constitutes a valid and legally binding obligation subject only to approval by the Bankruptcy Court.

8. No rights are intended to be created hereunder for the benefit of any third party, donee, creditor or incidental beneficiary.

9. Except as expressly provided herein, the parties' execution of this Stipulation shall not be deemed to constitute a waiver of any of their respective rights or remedies under the Bankruptcy Code or other applicable law.

10. Reports and notices required hereunder shall be delivered by hand or Federal Express or other overnight courier or by fax transmission to:

To Congress, at the following addresses:

CONGRESS FINANCIAL CORPORATION
(NEW ENGLAND)
One Post Office Square, Suite 3600
Boston, MA 02109
Attention: [John Husson]
Facsimile Number: [617-338-1497]

and its counsel at:

FULBRIGHT & JAWORSKI
1301 McKinney Street, Suite 5100
Houston, TX 77010-3095
Attention: Zack Clement
713-651-5151
713-651-5246 (fax)
zclement@fulbright.com (e-mail)

and

DUANE, MORRIS & HECKSCHER LLP
One Liberty Place
Philadelphia, PA 19103-7396
Attention: Claudia Z. Springer, Esquire
Matthew E. Tashman, Esquire
Facsimile Number: (215) 979-1020

To the Debtors at the following address:

AGRIFOS L.L.C.
667 Madison Avenue
New York, NY 10021
Attention: Margaret Smith
Facsimile Number: (212) 208-8855

and their counsel at:

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.
711 Louisiana, Suite 1900
Houston, TX 77002
Attention: H. Rey Stroube, III
(713) 220-5800
Facsimile Number: (713) 236-0822
Rstroube@akingump.com (e-mail)

The Debtors shall give notice to Congress of all future filings of any nature by the Debtors with the Bankruptcy Court in this case, or with any other court or governmental agency and shall serve copies thereof upon Congress in accordance with the immediately preceding paragraph hereof.

11. This Stipulation shall be governed by and construed in accordance with the internal laws of the State of Texas and the parties agree that the Bankruptcy Court shall have exclusive jurisdiction to interpret and enforce this Stipulation.

12. This Stipulation may be executed in any number of counterparts and by the different parties on separate counterparts. Each such counterpart shall be deemed an original, but all such counterparts together shall constitute one and the same Stipulation.

IN WITNESS WHEREOF, the Debtors and Congress, by and through their respective counsel, have caused this Stipulation to be executed on the date set forth above.

AKIN, GUMP, STRAUSS, HAUER &
FELD, L.L.P.

FULBRIGHT & JAWORSKI

By: _____
Name:

By: _____
Name:

Counsel for the Debtors

Counsel for Congress Financial
Corporation (New England)

So ORDERED, this 9th day
of May, 2001

Wesley W. Star

EXHIBIT "A"

Disbursement Budget for May 9-21 (\$ millions)

Rock from Togo plus freight	\$ 1.2
Other raw materials	0.5
Payroll	0.3
Utilities	0.3
Plant vendors	0.5
First Union interest	0.1
Professional fees	<u>0.1</u>
	<u>3.0</u>